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Japan: The illegality of 'Complete Gacha'

In a surprise ruling, Japan's Consumer Affairs Agency has declared certain social games to be illegal. Chie Kasahara and Daniel Hounslow of Atsumi & Sakai, Tokyo, discuss how concerns about a specific system, based on toy vending machines, has led to increased regulation of Japan's social gaming industry.

Social gaming through the internet has been popular in Japan since 2008, when Gree, one of the most famous social gaming platforms in Japan, began TV advertising targeting mobile phone users. Since then the social gaming industry in Japan has grown rapidly and was estimated by Mitsubishi UFJ Morgan Stanley to have been worth JPY 265.8 billion (JPY 265,800,000,000) in 2011, and it is expected that the value of social gaming will exceed that of the video games industry in 2012.

Users aged from upper teens to senior citizens engage in social gaming using mobile phones and/or smartphones. Initially the games are free, but many users purchase virtual items such as weapons for combat games, special feeds for fishing games, and accessories for avatars in communication games, etc. using virtual money which is then charged to the user in real money as a communication service fee for the mobile phone or smartphone, and paid through a credit card or by a pre-paid card.

Whilst social games are also played on PCs, and some kinds of games, such as social communication games (e.g. Second Life, etc.) are more suited to PCs than mobile phones, the number of users and hours used for gaming on mobile phones and/or smartphones is reported to far outstrip that for PCs, with users playing mobile social games to kill time when commuting, for example.

Rising charges for the purchase of such virtual items for social games and the exchange of such virtual assets for real money has been giving rise to issues, especially for younger people, while complaints to consumer affairs bureaus have been increasing.

Although gambling is heavily regulated in Japan, the law has not caught up with social gaming and there is no specific law in Japan governing social gaming, unlike for example, Pachinko (a pinball game in Japan, which was a 21.065 billion (21,065,000,000,000) yen industry in 2009), which is governed by the Act on Control and Improvement of Amusement Businesses.

Whilst the social game industry has had a good record with users and not attracted the attention of regulators, the Consumer Affairs Agency (the Agency) announced in May 2012 that it regards one of the popular forms methods of social gaming as illegal. This news hit the value of shares of the leading social gaming providers hard; Gree and DeNA (both of which are listed on the Tokyo Stock Exchange) lost an aggregate of over JPY 200,000,000,000 on their share prices.

The controversial type of social game in question is based on method, 'Complete Gacha', is one of the 'Gacha' systems, which are named after the 'Gacha Gacha' toy vending machine, a kind of lucky dip machine targeting children, where for a few hundred yen (a few dollars) the user can buy a capsule including a toy which cannot be chosen when making the purchase. Social game operators adopted a virtual 'Gacha Gacha' system on social games to provide rare items for users. If a user pays, say, 200 to 300 yen value as virtual money on the 'Gacha Gacha' system, then, like the physical 'Gacha Gacha' the system provides an item which cannot be chosen by the purchaser/user. If a game user then collects a certain set of items, e.g. the user 'buys' random virtual cards and gets a straight flush in a poker game, the game software provides the user with a rare virtual item or enhanced power which may benefit the user in playing the social game. This system is called a 'Complete Gacha' ('Comp-Gacha').

If a social game has a 'Comp-Gacha' system, users may purchase many 'Gachas' until they get the items needed to enable them to obtain a rare virtual item and/or

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enhanced power, and in doing so they will spend virtual money which is then charged to the user as a communication fee or paid by credit card as real money; it is reported that some users may commonly spend 100,000 yen (about 1,250 US dollars) or more a month for 'Gachas'.

In May 2012, the Agency announced that it took the view that the 'Comp-Gacha' system provides a prize prohibited by the Act against Unjustifiable Premiums and Misleading Representations (the Act). The Act provides that the Fair Trade Commission may, when it finds it necessary to prevent the unjust inducement of customers, restrict the maximum value of a prize or the total amount of prizes, the kind of prizes, or the method of offering of a prize, or any other matter relating thereto, or may prohibit the offering of a prize. In addition, a public notice issued in 1977 (public notice in relation to limitation of premiums and prizes) prohibits the combination of cards/items as a prize as it tends to be deceptive or fraudulent and be easily used to induce children to develop a passion for gambling.

The Agency takes the view that if a rare item (i.e. a rare virtual asset or power) is provided by a social game operator through the 'Comp-Gacha' system after the user purchases gains other items through purchasing many 'Gachas', the 'Comp-Gacha' system is a means to entice the gamer to purchase 'Gachas', and that the item or power consequently obtained is regarded as a prize prohibited by the Act.

However, the Agency's announcement does not have the force of law, and to date there is no regulation or guideline in force in relation to 'Comp-Gachas', though the Agency is planning to introduce a standard and is currently conducting public consultations.

In the meantime, in March 2012 six leading platform companies (NHN Japan, Gree, Cyber Agent, DeNA, Dwango and mixi) established a liaison council to promote the safety of the social gaming industry and to protect young gamers. In July 2012 the council announced voluntary 'Gacha' guidelines effective from 1st July 2012, as well as real money trade guidelines and guidelines for providing an in-game explanations, with the aim of making clear in games a of the game's systems (including 'Gachas') in order to prevent users from being misled. In addition, many platform companies have ceased to use the 'Comp-Gacha' system or are planning to cease using it.

The Agency's sudden announcement has disrupted the development of the social gaming industry. However, the need for regulation of this industry has finally been recognised and the implementation of regulations should promote a healthy improvement in social gaming. Two months from the surprise announcement by the Agency, the industry seems to be recovering its composure and the social gaming market continuing its rapid growth.

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